

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM COURT OF APPEALS
Bandstra, P.J., Fitzgerald and White, J.J.

CZYMBOR'S TIMBER, INC., and
MICHAEL CZYMBOR,
Plaintiffs-Appellants,

v

Supreme Court No. 130672

CITY OF SAGINAW,
Defendant-Appellee,
and

Court of Appeals No. 263505

Saginaw CC No. 03-050339-CH

SAGINAW CITY COUNCIL and
DEBORAH KIMBLE,
Defendants.

**AMICUS BRIEF OF THE MICHIGAN
DEPARTMENT OF NATURAL RESOURCES**

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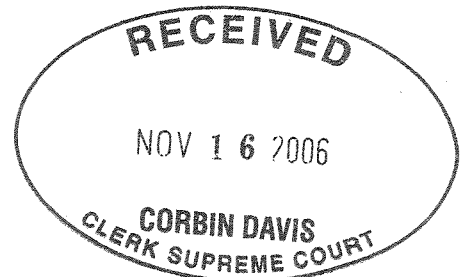


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QUESTIONS PRESENTED FOR REVIEW

- I. A municipal ordinance is preempted if the State has occupied the field of regulation. The Michigan Department of Natural Resources (MDNR) has the exclusive authority to regulate the taking of game. Under Part 419 of the Natural Resources and Environmental Protection Act, a political subdivision may only adopt an ordinance regulating the discharge of firearms or bows and arrows in hunting if the language of the ordinance is identical to that prescribed by the MDNR. The City of Saginaw has banned the discharge of firearms and bows and arrows without following the procedures in Part 419 and without providing an exception for the taking of game. Is the City's ban preempted because the State has occupied the field?**
- II. A municipal ordinance is also preempted if the ordinance directly conflicts with a state statutory scheme by prohibiting activities that are permitted by statute. Hunters may discharge firearms or bows and arrows consistent with the requirements of state statutes and regulations unless a municipality adopts an ordinance identical to that prescribed by the MDNR under Part 419. Is the City's ban preempted because the ban prohibits the taking of game that is otherwise permitted by state law?**

STATEMENT OF PROCEEDINGS AND FACTS

In the Order granting leave to appeal, this Court invited the Attorney General on behalf of the Michigan Department of Natural Resources (MDNR) to file a brief amicus curiae.

Amicus Curiae MDNR adopts the Statement of Facts and Proceedings presented in the Plaintiffs-Appellants' Brief on Appeal.

INTRODUCTION

The doctrine of preemption is based on the hierarchical relationship between the State and local units of government created by the State. Municipal corporations do not have any inherent authority; they derive their powers solely from the State.¹ Thus, even though municipal corporations such as home rule cities are given wide ranging powers to protect the health, safety, and general welfare, the exercise of these powers is always subject to the supreme authority of the State as expressed in state law.² When the State chooses to regulate in a certain manner, a municipal corporation may not choose differently if there would be a direct conflict between the two.³ When the State occupies a field, a municipal corporation must yield the ground.⁴

This case concerns whether two ordinances adopted by the City of Saginaw are preempted by the state statutory scheme governing the taking of game. The two ordinances ban the discharge of firearms and bows and arrows within city limits. By failing to provide an exception for taking of game, the ordinances also ban all hunting by these methods. In the decision below, the Court of Appeals holds that the ordinances are not preempted because the ordinances attempt to regulate the field of firearm control, not hunting control. (Op, pp 3, 6.) This exercise in definitional semantics is contrary to established preemption analysis and upsets the narrow role given to local units of government by Part 419, Hunting Area Control, of the Natural Resources and Environmental Protection Act (NREPA).⁵ Moreover, the decision ignores the direct conflict between the State's decision to permit an activity and the City's attempt to prohibit it. For these reasons, the decision of the Court of Appeals should be reversed.

¹ *Bivens v Grand Rapids*, 443 Mich 391, 397; 505 NW2d 239 (1993).

² See Const 1963, art 7, § 22; MCL 117.4j(3). The powers are also subject to the Constitution.

³ *People v Llewellyn*, 401 Mich 314, 322 n 4; 257 NW2d 902 (1977).

⁴ *Llewellyn*, 401 Mich at 322 n 5.

⁵ MCL 324.41901 *et seq.*

ARGUMENT

- I. The City of Saginaw's ban on the discharge of firearms and bows and arrows is preempted to the extent it bans hunting by these methods because the State has occupied the field of regulation of taking of game, and the City may only adopt such a ban if it is recommended by the MDNR.**

A. Standard of Review

A trial court's decision to grant summary disposition is reviewed de novo.⁶ Whether a state statutory scheme preempts a local ordinance is a matter of statutory interpretation, involving questions of law that are reviewed de novo.⁷

B. Argument

The State occupies the field of regulation of taking of game, a field that the City of Saginaw entered when it banned the discharge of firearms and bows and arrows without an exception for hunting. A state statutory scheme preempts an ordinance "by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even when there is no direct conflict between the two schemes of regulation."⁸ To determine whether there is "field preemption," courts look first to the express statutory language. By legislative referendum, the people have declared that the MDNR has the "exclusive authority to regulate the taking of game."⁹ This authority necessarily includes the regulation of the taking of game in a safe manner. If "the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is preempted."¹⁰

⁶ *Pohutski v Allen Park*, 465 Mich 675, 681; 641 NW2d 219 (2002).

⁷ See *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 256-263; 566 NW2d 514 (1997) (discussing preemption as question of law).

⁸ *Llewellyn*, 401 Mich at 322.

⁹ MCL 324.40113a.

¹⁰ *Llewellyn*, 401 Mich at 323.

In the typical preemption case, the grant of exclusive authority to the MDNR would end the analysis. All local ordinances that regulate the taking of game would be preempted. But surely recognizing this very conflict between the grant of exclusive authority and the concerns of localities, the Legislature created a circumscribed process by which a political subdivision may petition the MDNR to consider additional hunting safety measures and may then adopt those measures that the MDNR recommends as local ordinances. This process of state-approved local regulation is found in Part 419.¹¹ Read in light of the MDNR's exclusive authority, Part 419 provides the only method by which a local unit of government may adopt an ordinance that regulates and prohibits hunting and the discharge of firearms and bows and arrows in hunting.

1. The MDNR has exclusive authority to regulate the taking of game, which includes the authority to regulate the safe taking of game.

In 1996, the people of Michigan declared through a legislative referendum that the MDNR has the "exclusive authority to regulate the taking of game."¹² This declaration is found in Part 401, Wildlife Conservation, of NREPA.¹³ Game is defined as certain species of animals.¹⁴ To "take" is broadly defined as "to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity."¹⁵ While "weapon" is not defined in the statute, its "plain and ordinary meaning" includes a firearm as well as a bow

¹¹ MCL 324.41901 *et seq.*

¹² This authority is specifically vested in the Natural Resources Commission by MCL 324.40113a.

¹³ MCL 324.40101 *et seq.*

¹⁴ MCL 324.40103. Only the Legislature may designate a species as game. MCL 324.40110.

¹⁵ MCL 324.40104.

and arrow.¹⁶ Thus, the MDNR is given exclusive authority to regulate hunting by means of a firearm and also a bow and arrow.

This grant of exclusive authority includes regulation of the safe manner of taking game.¹⁷ The MDNR is directed to manage animals in the State by issuing orders to "establish lawful methods of taking game," "establish geographic areas within the state where certain regulations may apply to the taking of animals," and "determine conditions under which permits may be issued by the department."¹⁸ These orders are collectively known as the Wildlife Conservation Order.¹⁹ Part 401 already prohibits hunting or discharging a firearm within 150 yards of an occupied building without written permission.²⁰ A person also may not take an animal from a vehicle or transport a loaded firearm in a vehicle unless authorized by the MDNR in the Wildlife Conservation Order.²¹

The MDNR uses its exclusive authority to ensure that game is taken safely. For example, the Wildlife Conservation Order creates a safety zone in southern Michigan for the firearm deer season. (Attachment 1, Wildlife Conservation Order, Sections 1.6 and 2.1(4).) Only shotguns, handguns, and muzzleloaders may be used for deer hunting because these firearms have a more limited range than a centerfire rifle. Firearm deer season is the season in which hunter

¹⁶ See *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). ("[W]e give undefined statutory terms their plain and ordinary meanings.")

¹⁷ Forty years ago, the Attorney General issued an opinion concluding that the "comprehensive legislation indicates that the legislature has occupied the entire field of game regulations, including the manner of taking game and the types of guns to be used. It would appear that in doing so the legislature has also legislated in the field of firearm safety." OAG, 1961-1962, No 3659 (April 16, 1962). It is even more clear today that the State has occupied the field.

¹⁸ MCL 324.40107(1)(e), (h), (i). Part 435, Hunting and Fishing Licensing, of NREPA, authorizes the MDNR to issue licenses. MCL 324.43501 *et seq*.

¹⁹ Selected chapters of the Wildlife Conservation Order are in Attachment 1. The entire Wildlife Conservation Order can be found at http://www.michigan.gov/dnr/0,1607,7-153-10366_37141-120756--,00.html.

²⁰ MCL 324.40111(4).

²¹ MCL 324.40111(1), (2).

participation is at the highest. Much of the southern Michigan zone has flat topography and lacks forest cover, both factors that contribute to the possibility of damage or injury from an errant centerfire rifle shell. The prohibition against centerfire rifles for firearm deer hunting thus ensures the safety of both humans and property in the more densely populated southern Lower Peninsula. Other examples include the prohibition on hunting by firearms and bows and arrows during the nighttime, with limited exceptions for small caliber and short-range firearms and certain species (Attachment 1, Wildlife Conservation Order, Section 2.5), as well as the general prohibition on hunting in state parks (Attachment 1, Wildlife Conservation Order, Section 7.1).²²

This exclusive authority to regulate the taking of game does not exist in a vacuum, but is part of the broad powers and responsibilities given to the MDNR to manage wildlife in the State.²³ Animals found in the State are public property.²⁴ The same legislative referendum in 1996 declared that "[t]he wildlife populations of the state and their habitat are of paramount importance to the citizens of this state" and "[t]he sound scientific management of the wildlife populations of the state . . . is declared to be in the public interest."²⁵ A critical element of the management of wildlife populations is the licensed taking of game by the public. Hunting is not just a recreational sport; the MDNR carefully manages hunting to control overpopulation of certain species. Conversely, the MDNR may close a hunting season under Part 411, Protection

²² The MDNR prepares an annual hunting and trapping guide for hunters that informs them about the requirements governing hunting. This guide includes a list of counties that have local hunting controls under Part 419.

²³ The pervasiveness of the regulatory scheme is another indicator of preemption. *Llewellyn*, 401 Mich at 323-324. While this factor need not be considered if there is an express grant of exclusive authority, the comprehensive nature of the state statutory scheme demonstrates why the MDNR has the exclusive authority to regulate the taking of game.

²⁴ MCL 324.40105.

²⁵ MCL 324.40113a(1)(a)-(b).

and Preservation of Fish, Game, and Birds, of NREPA, if a species is threatened by depletion or extermination.²⁶

2. Part 419 is the only method by which a political subdivision such as the City of Saginaw may adopt an ordinance regulating hunting safety.

Part 419 provides a political subdivision with the opportunity to petition the MDNR to consider additional hunting safety measures, while reaffirming MDNR's exclusive authority to regulate the taking of game in a safe manner. The explicit—and limited—role given to localities by Part 419 distinguishes this case from *Rental Property Owners Association of Kent County v Grand Rapids*, the most recent decision of this Court that extensively discusses state preemption of municipal ordinances.²⁷ In *Rental Property Owners*, the Court held that a municipal ordinance was not preempted because the state nuisance statute "merely provides a mechanism for abating nuisances" and "does not inhibit municipalities from providing alternative and consistent means to abate these and other nuisances."²⁸ Here, the Legislature considered whether municipalities should regulate hunting safety and crafted a compromise: a political subdivision may petition the MDNR to consider the issue, but may only adopt those measures recommended by the MDNR. This process is designed to preserve the State's ability to manage wildlife.²⁹

Part 419 begins by vesting the power to "regulate and prohibit hunting, and the discharge of firearms and bow and arrow" in the MDNR.³⁰ This power can be used under the Act where "hunting or the discharge of firearms or bow and arrow may or is likely to kill, injure, or disturb

²⁶ MCL 324.41101 *et seq.*

²⁷ *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246; 566 NW2d 514 (1997).

²⁸ *Rental Prop Owners Ass'n of Kent Co*, 455 Mich at 261.

²⁹ Another indicator of preemption is the nature of the regulated subject matter, which "may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." *Llewellyn*, 401 Mich at 324-325. Again, this factor need not be considered if there is an express grant of exclusive authority, but Part 419 strikes a balance between the State's interest in uniform wildlife management and the existence of local conditions.

³⁰ MCL 324.41901(1).

persons who can reasonably be expected to be present in the areas or to destroy or damage buildings or personal property situated or customarily situated in the areas or will impair the general safety and welfare."³¹ The MDNR may choose to address these problems by not only recommending that areas be closed to hunting for a specific time, but also by "prescrib[ing] methods and weapons that are not inconsistent with law."³²

The governing body of a political subdivision may invoke the MDNR's power by requesting the MDNR "to recommend closure of the area as may be required to relieve the problem" when "the safety and well-being of persons or property are endangered by hunters or discharge of firearms or bow and arrows."³³ The MDNR—not the governing body—is directed to hold a public hearing, "cause such investigations and studies to be made of the area as it considers appropriate," and based on the MDNR's assessment, produce a "statement of the facts of the situation."³⁴ MDNR then submits its findings and recommendations to the governing body of the political subdivision.³⁵

Upon receipt of the MDNR's recommendations, the governing body has only two options for local regulation: accept the measures recommended by MDNR, or do nothing.

If the governing body chooses to accept the measures, the body incorporates them into a local ordinance that is "identical in all respects to the regulations prescribed by the [MDNR]."³⁶ (For the current list of measures, see Attachment 2, Hunter Safety Section, Local Hunting Area Controls.) Part 419 specifically provides that an ordinance may be enforced by state, local, and

³¹ MCL 324.41901(1).

³² MCL 324.41901(1).

³³ MCL 324.41901(1).

³⁴ MCL 324.41901(1)-(2).

³⁵ MCL 324.41902(1).

³⁶ MCL 324.41902(1). Prior to 1986, Part 419 also directed the MDNR to promulgate a rule under the Administrative Procedures Act. MDNR now lists the hunting safety regulations as embodied in local ordinances, but does not promulgate rules.

county law enforcement officers.³⁷ Many of the ordinances include not just a prohibition on hunting with a firearm, but also a prohibition on the discharge of firearms in the area. (See, e.g., Attachment 2, R 317.108.1-108.2 (Barry County).) Others are more restrictive and include a prohibition on the discharge of a firearm as well as a bow and arrow, the same prohibitions at issue in this case. (See, e.g., Attachment 2, R 317.150.4 (Harrison Township, Macomb County).)

After the ordinance is adopted, the MDNR retains authority to unilaterally terminate closure of an area to hunting "[i]f, in the judgment of the department, closure signs are not maintained so as to adequately give notice of the closure to a careful and prudent person."³⁸ The MDNR may also unilaterally "authorize the use of firearms to prevent or control depredations of birds or animals in situations where significant damages are being caused by wildlife."³⁹

If the governing body chooses to reject the measures, Part 419 provides that "further action shall not be taken."⁴⁰ Thus, the governing body may not choose some of the recommendations of the MDNR while rejecting others. Nor may the governing body adopt its own hunting safety measures in an ordinance when it disagrees with the recommendations of the MDNR. This limitation once again demonstrates that the authority to "regulate and prohibit hunting, and the discharge of firearms and bow and arrow" rests solely with the MDNR.⁴¹

The City of Saginaw argues that the process under Part 419 is "permissive" because the statute uses the term "may." The entire sentence at issue reads as follows:⁴²

Whenever the governing body of any political subdivision determines that the safety and well-being of persons or property are endangered by hunters or

³⁷ MCL 324.41902(2).

³⁸ MCL 324.41903.

³⁹ MCL 324.41904.

⁴⁰ MCL 324.41902(1).

⁴¹ MCL 324.41901(1). Part 419 is silent on the actions that may be taken by the MDNR if the governing body does not adopt the recommended hunting safety measures. But the Natural Resources Commission could still issue orders that would ensure the safe taking of game.

⁴² MCL 324.41901(1).

discharge of firearms or bow and arrows, by resolution it may request the [MDNR] to recommend closure of the area as may be required to relieve the problem.

In light of the other provisions of Part 419, the use of the term "may" means that the political subdivision either "may request" the MDNR to consider the problem, or it "may" do nothing at all. Part 419 does not impose a mandatory duty on a political subdivision to make such a request. But it would make a mockery of the detailed process in Part 419 if the political subdivision could otherwise adopt ordinances regulating the discharge of firearms and bows and arrows in hunting. As Plaintiffs-Appellants convincingly argue, no political subdivision would ever petition the MDNR and accept the limitations of Part 419 if the governing body could unilaterally regulate in the manner it wishes.

3. The Court of Appeals' decision incorrectly applied established preemption analysis by redefining the field of regulation.

In the decision below, the Court of Appeals erroneously held that the ordinances are not preempted because the City of Saginaw is regulating in the field of "firearm control," not hunting. (Op, p 6.) Although the decision cites *Llewellyn*, the Court of Appeals did not apply the established test under *Llewellyn* to determine whether there is field preemption. Instead, relying on an earlier panel decision, the Court of Appeals assumed that a municipality can only regulate in one field at a time and chose the field of "firearm control." This reasoning ignores the effect of the ordinance on the field of taking of game, as well as the intent of Part 419.

The Court of Appeals placed great weight on a 1974 Court of Appeals decision, *Michigan United Conservation Clubs v Cadillac* ("MUCC"), which held that a similar ordinance was not preempted by an earlier version of Part 419.⁴³ In *MUCC*, the Court of Appeals reasoned first that the subject of the ordinance—which prohibited the discharge of firearms and bows and

⁴³ *Michigan United Conservation Clubs v Cadillac*, 51 Mich App 299; 214 NW2d 736 (1974). The opinion apparently adopts large portions of the trial court's decision.

arrows without an exception for hunting—was not hunting, but the "separate and distinct subject of firearm control."⁴⁴ The Court of Appeals then noted that the City of Cadillac was given specific authority to regulate the discharge of firearms by a special act charter.⁴⁵ Finally, the Court of Appeals framed the question before it as "whether [the earlier version of Part 419] overrides the specifically granted police power of the City of Cadillac and prescribes the exclusive means for firearm control therein?"⁴⁶ The Court answered this question as follows: "[I]t does not since it appears that [the earlier version] is not intended to apply to *any city*."⁴⁷

As an initial matter, *MUCC* can be distinguished from the matter in front of this Court because the version of Part 419 in effect in 1974 did not apply to cities. Since then, the act has been amended and Part 419 now applies to "any political subdivision." *MUCC* can also be distinguished because the City of Saginaw has not been granted specific authority in the Home Rule City Act to regulate the discharge of firearms by ordinance, while the City of Cadillac apparently had such authority by special act charter.⁴⁸

But to the extent *MUCC* stands for the proposition that an ordinance prohibiting the discharge of firearms and bows and arrows without an exception for hunting is not preempted because the ordinance regulates only in the field of "firearm control," this holding should be overruled. The ordinances adopted by the City of Saginaw regulate both in the field of "firearms control"—or more accurately "weapons control"—and in the field of "taking of game." Where these two fields intersect, Part 419 controls. This can be seen most clearly in the following Venn diagram:

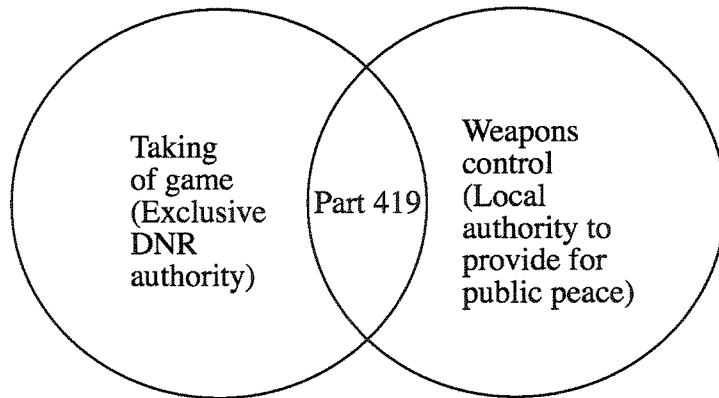
⁴⁴ *MUCC*, 51 Mich App at 301 (quoting the trial court opinion).

⁴⁵ *MUCC*, 51 Mich App at 301 (quoting the trial court opinion).

⁴⁶ *MUCC*, 51 Mich App at 302 (quoting the trial court opinion).

⁴⁷ *MUCC*, 51 Mich App at 302 (quoting the trial court opinion) (emphasis in original).

⁴⁸ See MCL 117.3(j) (requiring the city charter of a home rule city to provide for the "public peace and health and for the safety of persons and property"); MCL 117.4j (stating that laws and ordinances are "subject to the constitution and general laws of this state").



As this diagram shows, the City of Saginaw may regulate the discharge of firearms and bows and arrows consistent with its authority to provide for the "public peace and health and for the safety of persons and property," as long as there is an exception for the taking of game.⁴⁹ If the City wishes to regulate the discharge of firearms and bows and arrows in hunting, the City must petition the MDNR under Part 419 and accept the MDNR's recommended actions.

4. Part 417 applies only to private shooting preserves and does not otherwise affect this case.

In its Order granting leave to appeal, this Court requested that the parties brief the issue of "whether MCL 324.41701 through 41703 affect this case." Part 417, Private Shooting Preserves, of NREPA, authorizes the MDNR to issue licenses to private companies who operate bird shooting preserves.⁵⁰ Only "artificially propagated wild turkeys and wild turkey hybrids and other artificially propagated species as prescribed by the [MDNR]" may be hunted on the preserves.⁵¹ The property owned by Plaintiffs is not a bird shooting preserve, and thus is not regulated under Part 417.

⁴⁹ See MCL 123.1104. The City's authority does not extend to other aspects of firearm regulation, such as registration, purchase, or possession. MCL 123.1102.

⁵⁰ MCL 324.41701 *et seq.*

⁵¹ MCL 324.41704(1). The MDNR has issued a "Shooting Preserve Commission Order" that, among other requirements, prescribes the bird species. This Order is effective September 1, 2000 and may be found at http://www.michigandnr.com/law/law_book/orders/preserve.html.

Part 417 specifically provides that shooting preserves may allow hunting on Sundays "notwithstanding the provisions of a local ordinance or regulation."⁵² This express preemption should be understood within the context of the unique and longstanding municipal restrictions on Sunday business activity, and specifically their application to private shooting preserves. To the extent that such express preemption invites a question about state occupation of the field in other situations, that question was definitively answered in 1996: by legislative referendum, the people declared that the MDNR has the exclusive authority to regulate the taking of game. Moreover, a negative inference from this Part 417 provision would be directly contrary to the comprehensive nature of the statutory scheme governing hunting, as well as the confined role given to political subdivisions in Part 419.⁵³

II. The City of Saginaw's ban on the discharge of firearms and bows and arrows is preempted to the extent it bans hunting by these methods because the ban directly conflicts with the statutory scheme; the ban prohibits hunting when it would otherwise be permitted by state statute and regulation.

A. Standard of Review

A trial court's decision to grant summary disposition is reviewed de novo.⁵⁴ Whether a state statutory scheme preempts a local ordinance is a matter of statutory interpretation,

⁵² MCL 324.41702.

⁵³ In an unpublished decision, the Court of Appeals held that a zoning ordinance regulating the location of a shooting preserve was not preempted by Part 417. *Milan Township v Jaworski*, unpublished opinion per curiam of the Court of Appeals, decided December 4, 2003 (Docket No. 240444). As Plaintiffs-Appellants explain in their brief, this decision supports preemption here. The Court of Appeals accepted that the State occupies the field of regulation of taking of game, but reasoned that a zoning ordinance does not regulate the taking of game because it only determines the location of a preserve. In the matter in front of this Court, the ordinance regulates the manner of taking of game.

⁵⁴ *Pohutski*, 465 Mich at 681.

involving questions of law that are reviewed de novo.⁵⁵

B. Argument

A municipal ordinance is also preempted if the ordinance is in "direct conflict with the state statutory scheme."⁵⁶ A direct conflict occurs "when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits."⁵⁷ "Accordingly, it has often been held that a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized, permitted, or required, or authorize what the legislature has expressly forbidden."⁵⁸ Because Plaintiffs-Appellants have already extensively briefed this issue, MDNR will only highlight the argument here.

As discussed in Argument I, *supra*, Part 419 is the only method by which a political subdivision such as the City of Saginaw may adopt an ordinance that regulates and prohibits hunting and "the discharge of firearms and bow and arrow" in hunting. Because the City has not followed the procedures of Part 419 and adopted ordinances that are identical to the recommendations of MDNR, the statutory scheme permits the taking of game in the City of Saginaw as long as persons obtain a license and comply with all statutory and regulatory requirements, including the Wildlife Conservation Order. These requirements include such safety measures as the prohibition on hunting or discharging a firearm within 150 yards of an occupied building without written permission.⁵⁹ The ordinances adopted by the City of Saginaw thus prohibit the taking of game, which the statutory scheme permits.

⁵⁵ See *Oakland Co Bd of Co Rd Comm'rs*, 456 Mich at 610; *Rental Prop Owners Ass'n of Kent Co*, 455 Mich at 256-263 (discussing preemption as question of law).

⁵⁶ *Llewellyn*, 401 Mich at 322.

⁵⁷ *Llewellyn*, 401 Mich at 322 n 4.

⁵⁸ *Rental Prop Owners Ass'n of Kent Co*, 455 Mich at 262 (quoting 56 Am Jur 2d, *Municipal Corporations*, § 374, pp 408-409).

⁵⁹ MCL 324.40111(4).

This Court has held that municipalities may regulate in the interstices of state law as long as "there is no conflict between the two, and the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory."⁶⁰ Thus, "[t]he mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements."⁶¹ In this case, however, the City of Saginaw has gone beyond exacting additional requirements; it has regulated within an area that is governed by Part 419 alone. The ordinances thus create a direct conflict with state law by prohibiting hunting that is authorized by the MDNR through its hunting licenses.

⁶⁰ *Rental Prop Owners Ass'n of Kent Co*, 455 Mich at 262 (quoting 56 Am Jur 2d, Municipal Corporations, § 374, pp 408-409).

⁶¹ *Rental Prop Owners Ass'n of Kent Co*, 455 Mich at 262 (quoting 56 Am Jur 2d, Municipal Corporations, § 374, pp 408-409).

CONCLUSION

This Court need not look beyond the express language of the state statutory scheme to find preemption. MDNR is granted "exclusive authority" to regulate the taking of game, which includes the authority to regulate the taking of game in a safe manner. Because the ordinances adopted by the City of Saginaw do not provide an exception for hunting, the ordinances necessarily regulate the taking of game; that is, they regulate hunting with the "weapon" of a firearm or bow and arrow. While political subdivisions may petition the MDNR to consider hunting safety measures under Part 419 and may adopt ordinances identical to the MDNR recommendations, the City of Saginaw never invoked the Part 419 process. The ordinances thus attempt to regulate in a field occupied by the MDNR.

Alternatively, the ordinances are preempted because they are in direct conflict with the state statutory scheme governing hunting. The ordinances prohibit a person from taking of game using a firearm or bow and arrow within the city limits, an activity that is permitted by the MDNR if the person obtains a license and complies with other requirements in state law.

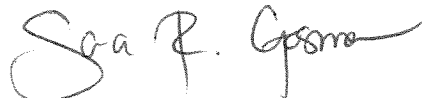
RELIEF SOUGHT

Amicus Curiae MDNR asks this Court to reverse the Court of Appeals' decision.

Respectfully submitted,

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